

Page 177

1 National Gypsum? For your claims estimates?

2 A My forecast -- both the values of the
3 pending claims and the forecasts for and values of
4 the future claims were based upon disaggregated
5 claims by disease and by occupation both. So it's a
6 cross-tab. So there were four occupational
7 categories times each of the disease categories.

8 Q You didn't do that in your analysis
9 reflected in Exhibit 1; is that true?

10 A That's not true.

11 Q Okay. You did a sensitivity analysis?

12 A No.

13 Q Okay. What is true with regard to what
14 you did about aggregation or disaggregation by
15 occupation and disease type?

16 A We disaggregated. Look at page 12. Look
17 at page 24. It's a flawed method. With what I know
18 now, I wouldn't use it if I put myself back there.
19 But we did it primarily because we had done it in
20 National Gypsum.

21 Q The trend in that time period was that
22 insulators and shipyard workers were expected to be
23 going down in numbers; was that correct?

24 A Are you looking at a particular page, or
25 are you just asking me?

Page 178

1 Q I'm asking you if you recall the trends,
2 but you can look at a page if you want to.

3 A You're speaking of the epidemiology or the
4 claims filings?

5 Q I'm talking about your projections. I
6 believe it is based on epidemiology.

7 A I don't have the annual numbers of filings
8 or the reforecast by disease -- by occupational
9 groups here with me. I don't have the epidemiology
10 broken down. But the incident of asbestos-related
11 cancers peaked earlier for shipyard workers than it
12 did for insulators, which in turn were earlier than
13 the other two categories. So that would have had
14 the effect you were talking about.

15 Q Construction workers were expected to have
16 more claims going forward in 1992; wasn't that true?
17 Claims were expected to go up for construction
18 workers?

19 A You're talking about trends or absolute
20 numbers? Because your question asked both.

21 Q Well, I think I'm talking about as a
22 percentage of the claims as well as absolute
23 numbers, but if there's a difference, you can let me
24 know that.

25 A Sitting here right now, I can't recall

Page 179

1 what the relative absolute numbers of these claims
2 were. Let me look at the forecast. Just a second.
3 I don't think construction workers would have been
4 the largest in terms of absolute numbers.

5 Q Ever?

6 A I think not, but I can't answer that with
7 certainty.

8 Q Do you know for GAF what occupations had
9 the greatest exposure to the products that generated
10 the most litigation?

11 A Well, historically, most of their claims
12 came from this amorphous "other" category. They
13 were neither shipyard insulators or construction
14 workers. That's a category within the dynamic
15 category as it's called within the CCR database.
16 This is page 17 -- these are the pending claims, but
17 I think it reflects reasonably well the --

18 Q Do you know which product by name of GAF
19 was the source of most of the claims as of 1994?

20 A I have -- I provided a list of the
21 products here. I can't tell you specifically which
22 product had the most claims, no. I don't know that
23 that's -- one could ascertain that.

24 Q How would you go about ascertaining that?

25 A I don't think you could.

Page 180

1 Q Shipyard workers were typically claimants
2 exposed during the earlier time periods than these
3 studies often during the 1940s; isn't that right?

4 A Could you read the question?

5 MR. FINCH: Object to form.

6 (The reporter read the record as
7 requested.)

8 THE WITNESS: I don't understand that
9 question.

10 BY MR. MILLER:

11 Q Shipyard workers were generally exposed
12 during the war years; isn't that true?

13 A There were a lot of shipyard workers that
14 were exposed during the war years. There were a lot
15 of shipyard workers that were exposed in subsequent
16 years. The absolute number exposed in each -- there
17 was a higher concentration, I think, on an annual
18 basis of employment with exposures in the period
19 between 1941 and 1945.

20 But if you add all the persons who were
21 exposed to shipyards before and after 1945, I don't
22 know whether you'd find that to be the -- that most
23 of them were shipyard -- were war-year exposures. I
24 haven't looked at that. I'm not sure how that would
25 pan out.

Page 181

1 Q By 1993, the frequency of shipyard worker
2 claims had begun to go down some, hadn't it?

3 A It may have. Sitting here right now, I
4 don't have a definite answer to that. Propensities
5 to sue were going up, but the incidents -- by 1993?
6 The incidents would have peaked earlier. So it just
7 depends upon what those two -- was the increase in
8 the propensity to sue greater than the decline in
9 the incidents? I just can't tell you.

10 Q Do you recall dealing with the frequency
11 of shipyard worker claims in your testimony in
12 National Gypsum?

13 A Yes.

14 Q Do you recall what you said?

15 A No. I said a lot of things about
16 shipyard. I certainly don't recall everything I
17 said.

18 Q Do you recall whether you said, during
19 your National Gypsum testimony that the frequency of
20 shipyard worker claims had begun to go down some?

21 A One, I don't recall that, and two, that
22 would be with regard to National Gypsum, I think,
23 unless I was making a general description.

24 Q My question was --

25 A But I don't know what I said. So no, I

Page 182

1 don't recall that. No, I don't recall.

2 Q My question is whether you recall saying,
3 with regard to National Gypsum, that the frequency
4 of the shipyard worker claims had begun to go down
5 some.

6 A I don't recall that.

7 Q Okay. If it's all right with you, I
8 thought rather than mark these transcripts, we'll
9 give you a copy. We can just look at them.
10 Otherwise, they'll just generate a forest worth of
11 extra paper.

12 MR. FINCH: We don't need to mark them as
13 exhibits.

14 THE WITNESS: Thank you.

15 BY MR. MILLER:

16 Q I'm directing your attention to transcript
17 of proceedings. These are kind of funny because
18 they're renumbered each day. So you have to look at
19 the day. This is volume 2 on January 21, 1993.
20 It's not actually necessarily volume 2 of your
21 testimony.

22 Let me direct your testimony to page 28.
23 Certainly, read as much as you want to, but what I
24 wanted to call your attention to to try to refresh
25 your recollection is a reference you're making to

Page 183

1 Exhibit AC40, and there is a question on line 5 that
2 has an answer that goes on for --

3 A A while.

4 Q -- a long time. In the interest of
5 efficiency, I'm just going to direct your attention
6 to the first paragraph. You can read as much of it
7 as you'd like to. Please tell me when you've read
8 it, and then I'll ask you a question about it.

9 A All right. I've read this paragraph of my
10 answer beginning at line 7, page 28.

11 Q In talking about a CCR data tape for June
12 of 1992; is that right?

13 A That was the data we had. It had data
14 running through 1991, yes.

15 Q Do you still have a copy of that data
16 tape, by the way?

17 A We may. I don't know.

18 Q Did you use it at all in your work in this
19 engagement reflected by Exhibit 1?

20 A No.

21 Q You say that that describes filings
22 against National Gypsum by occupation; is that
23 correct?

24 A That's what I said, yes.

25 Q And you say that there's somewhat

Page 184

1 different trends by occupation in the data; is that
2 also correct?

3 A Yes. It's correct that that's what I
4 said, yes. It's probably also correct.

5 Q All right. Well, line 11 through line 13
6 has a sentence that says "shipyard workers are
7 typically claimants who are exposed among the
8 earliest time period frequently in the '40s."

9 Do you see that sentence?

10 A Yes.

11 Q Do you believe that was a correct
12 reflection of what you were seeing in that data
13 tape?

14 A I think that -- I don't think the data
15 tape would have answered that question.

16 Q Was that your belief at the time as to
17 what you were seeing generally in the asbestos
18 litigation environment in 1993?

19 MR. FINCH: Object to form.

20 THE WITNESS: Sorry. Could you repeat the
21 question?

22 BY MR. MILLER:

23 Q Yeah. Is that a reflection of what you
24 were seeing generally in that time period in
25 asbestos claims patterns?

Page 185

1 A The this point in time, I wouldn't have
2 had many data sets. So I wouldn't have had much
3 general experience. I would have had this,
4 Eagle-Picher, maybe some from Manville. I think
5 this is the first case I testified on an estimation.
6 With all due respect to myself, I think that's a
7 poorly articulated sentence. I'm not sure quite
8 what I meant or that I was even quite sure what I
9 meant when I said it.

10 Q Do you disagree with it now?

11 A I don't understand it.

12 Q Good. I thought it was just my questions
13 that you were having trouble understanding.

14 A No. I find some of the most perplexing
15 things I read are things I've said. The
16 epidemiology is based upon data that indicates that
17 the pattern of exposures among shipyard workers tend
18 to be earlier than the other occupational groups.
19 That's pretty unambiguous, and hopefully my
20 answer -- my statement was understandable in
21 contrast to this.

22 But that doesn't necessarily mean that the
23 claimants were concentrated in that period of time,
24 and I don't know what "typically claimants who were
25 exposed" means. So I find it an inartful sentence,

Page 186

1 and I'm sorry I said it.

2 Q At the bottom of page 28 and the top of
3 page 29 -- and I realize that's beyond what I asked
4 you to read --

5 A I'm flexible.

6 Q -- it has a sentence that I'd like to
7 direct your attention to, that carryover sentence.

8 So why don't you read --

9 A I'll read that whole paragraph.

10 Q Why don't you read that whole paragraph,
11 and tell me when you've done that.

12 A Thank you.

13 I've read that sentence -- that paragraph
14 rather.

15 Q The sentence that carries over says "and
16 you can see there that where shipyard workers are
17 going down, construction workers are going up."

18 Did I read that right?

19 A Yes.

20 Q What do you think that meant?

21 A I think that's number of filings.

22 Q That's consistent with the epidemiology as
23 it was perceived in early 1993, isn't it?

24 A That's my recollection, yes.

25 Q And you noticed a trend over that previous

Page 187

1 five to 10 years that construction claims had been
2 filed in increasing numbers; isn't that correct?

3 A Without having the data in front of me, I
4 can't answer that question, but I have to -- I just
5 have to insert that I don't regard the -- these
6 occupational categories by -- collected by CCR as
7 being very reliable.

8 Q Why is that?

9 A Well, first of all, because they produce
10 some absurd propensities to sue for insulators, and
11 secondly, it's just in the nature of the kind of
12 information that collected. How they get
13 categorized is -- I don't have confidence in the
14 quality of the data entry for this category. It's
15 one of the reasons why I wouldn't use this kind of
16 analysis if I were writing on a clean slate today
17 and did in section 7.

18 Q What are the absurd propensity to sue for
19 insulators that you're referring to in that answer?

20 A Absurd is probably too strong a term, but
21 unlikely. They produce propensities to sue that
22 exceed 100 percent across a series of years for
23 insulators. Now -- I mean, that's possible -- for
24 meso. That's not unexpected for other cancers or
25 lung cancers, but for mesos, you wouldn't expect it

Page 188

1 for an extended number of years, that more people
2 would be filing claims than presumably were getting
3 the disease. And the reason that happens is because
4 how CCR enters the information describing the work
5 category of insulator is probably different from how
6 Nicholson and his colleagues use the term in their
7 epidemiology work.

8 Nickelson was sticking pretty closely to
9 people that were in the union; whereas, CCR appears
10 to be using -- categorizing someone as an insulator
11 even if they worked in a different union and a
12 different setting. So there appears to be an
13 inconsistent use of the terms in the epidemiology
14 and in the claims database that makes a comparison
15 of the two troubling.

16 Q Do you know if CCR characterized them as
17 insulators on its own or if it relied upon what the
18 plaintiffs claimed their occupation was when they
19 filed the claim?

20 A I believe it's a -- it would have been a
21 combination of both things. There's a judgment --
22 there's entry of information by the on the complaint
23 or by the law firm, but there's also judgment on how
24 the data gets entered into the database invariably.

25 Q Insulators received higher settlements

Page 189

1 than many other categories, didn't they?

2 A From whom?

3 Q From the CCR.

4 A I haven't looked at that.

5 Q If they did, which I believe is correct,
6 hypothetically, wouldn't that create some incentive
7 for plaintiffs to categorize themselves as
8 insulators if they had a choice?

9 A If your premise is true, it certainly
10 would have created -- and the law firm knew it,
11 which it presumably would have, it would have
12 created an incentive to label workers as insulators,
13 particularly if in doubt, and that's another reason
14 to question the integrity of the information and not
15 cause -- cause me not to -- if that's true, cause me
16 not to want to rely upon the CCR categories for
17 purposes of making forecasts.

18 MR. MILLER: How long have we been going?

19 VIDEO OPERATOR: We've been on the record
20 for about an hour.

21 MR. MILLER: Why don't we take a break.

22 VIDEO OPERATOR: We're off the record.

23 The time is approximately 3:18 p.m.

24 (Recess.)

25 VIDEO OPERATOR: We are back on the

Page 190

1 record. The time is approximately 3:42 p.m. This
2 is the beginning of tape number 4.

3 BY MR. MILLER:

4 Q Let me ask you to turn, please, with me in
5 your report, Exhibit 1, if you have it.

6 A I have it.

7 Q To page 7.

8 A I have that.

9 Q I'd like to ask you to read the first full
10 paragraph to yourself under section 4, the one that
11 starts "this report forecasts."

12 A Sure.

13 I've read that paragraph.

14 Q You're explaining here what you've done in
15 the two different parts of your report, one through
16 section 6 and one beginning in section 7?

17 A And one in section 8 as well.

18 Q Beginning in section 7. In the middle you
19 say that "the 1993 data showed trends of increasing
20 GAF cancer claim filings, nonmalignancy claim
21 filings and settlement filings some of which were
22 inconsistent with the in that era, and that required
23 further exploration."

24 That's a part of a sentence, but did I
25 read that correctly?

Page 191

1 A Yes, you did.

2 Q You then say "as of 1993, the meaning of
3 these trends was uncertain: Did they represent the
4 beginnings of long-term trends that would increase
5 GAF's liability? Or were they simply perturbations
6 that had no long-term significance?"

7 Did I read those sentences correctly?

8 A Yes, did, and I love the emphasis you put
9 on it.

10 Q What are perturbations?

11 A Disturbances.

12 Q From a data standpoint, what is the
13 significance of figuring out whether something is a
14 perturbation or a long-term trend?

15 A Well, you would expect -- well, a
16 long-term trend is kind of self-explanatory, I
17 think. Perturbations are just -- maybe, may or may
18 not be one-time events that have no bearing upon
19 what one would expect to happen over the long term.

20 Q In your work in the asbestos estimation
21 area, have you seen some examples of perturbations
22 in the data before?

23 A Yes.

24 Q Can you give me some examples of what
25 turned out to be a perturbation, in your view?

Page 192

1 A The 1989 claim filings against the
2 Manville trust. They got something like 100,000
3 claims in that year. No one had gotten that level
4 of claims before. It was another decade before that
5 level of claims were reached elsewhere. That was a
6 perturbation. The surge you asked me about earlier
7 for the Fibreboard cases would probably have been a
8 perturbation.

9 Q Those being the maritime legal clinic
10 claims you're talking about or --

11 A Plus, just kind of a filing of claims that
12 just didn't look very high quality in order to try
13 and get in on the money that was being generated by
14 the settlement with the insurance companies. Those
15 are examples.

16 Q As a forecaster, have you found that
17 sometimes passage of time helps clarify whether
18 something say trend or a perturbation?

19 A Passage of time denotes that you have
20 information about trends. So at time point 1,
21 you're not sure whether or not you've got a trend,
22 and you could look at it 10 years later. You can
23 see if, you know, in fact it turned out to have been
24 a trend.

25 So clearly, since trends are timebound,

Page 193

1 they define the events that change over time. Of
2 course, the more time you have, the better you can
3 understand it. Things that seem to be one-time
4 events, if they recur, then it's probably not a
5 one-time event, or it's something that has a cause
6 that may be episodic as opposed to a one-time event.
7 So sure, more information always helps.

8 Q Turn with me to page 8, and look at the
9 first full paragraph at the bottom. I'm going to
10 read a sentence, and you can tell me if I read it
11 correctly, the one that starts with the
12 word "first."

13 Do you see that?

14 A I see that.

15 Q "First, the BMCA transactions occurred
16 first when the GAF's claims filings and settlement
17 values were increasing, but it was not possible at
18 that time to understand the significance of those
19 increases, because information about GAF that would
20 have clarified these trends was cut off by the
21 Georgine class action."

22 Did I read that correctly?

23 A Yes.

24 Q Could you explain how the Georgine class
25 action operated to cut off information that would

Page 194

1 have clarified the trends?

2 A I'm going to read the paragraph preceding
3 to myself.

4 First of all, there was a stay against
5 filing claims that was entered by the District
6 Court. So that cut off the information about
7 continued filings, other than filing claims subject
8 to the Georgine class action. The changes in tort
9 value of claims couldn't be examined either with the
10 stay, because they were no longer settling claims in
11 tort.

12 Anything that got resolved after that stay
13 was entered would have been claims that were
14 resolved subject to the terms of the Georgine
15 settlement. So as we discussed many hours ago now,
16 those were in the nature of contract resolutions,
17 not tort claims. So all of that ended when the
18 Court entered its stay.

19 Q Was there any requirements that a
20 plaintiff holding back a claim because of the
21 injunction had to notify the potential defendants
22 that they would have filed a claim except for that
23 injunction?

24 A I'm not aware of that.

25 Q In other words, people didn't have to make

Page 195

1 a reservation and say I would have filed a claim,
2 but I'm enjoined, so I'm not filing it now?

3 A No, that's not my understanding.

4 Q You're not aware of any database that had
5 been generated at that point in time of all the
6 claims that might be sitting in some plaintiffs' law
7 firm's files not yet worked up because of the
8 Georgine injunction, are you?

9 A The Georgine injunction didn't have
10 anything to do with working claims. It had to do
11 with filing claims and paying them in the tort
12 system.

13 Q Maybe my question wasn't good. Let me try
14 it again. You're not wear of any database at the
15 time that would say what claims were waiting to be
16 filed as of January 1994 but for the Georgine
17 injunction?

18 A You can't identify them, because it's the
19 filing of the claim that is the -- the event that's
20 being prevented by the operation of the court stay
21 is what would identify them. You would look, I
22 guess, at claims filings against some of the other
23 defendants and make inferences about what fraction
24 of those claims might have been filed against GAF or
25 CCR members. Claims continued to be filed against

Page 196

1 other defendants.

2 Other things were going on at the time.

3 Remember, the Manville trust wasn't paying any
4 money. So you couldn't really look to the Manville
5 data to reflect kind of a parallel experience. But
6 that's the best one could do, I think, looking to
7 other defendants.

8 Q But you don't recall actually performing
9 that analysis yourself in 1994 to try to figure out
10 what claims might be accruing out there because of
11 Georgine, do you?

12 A Actually, CCR did a survey of plaintiffs'
13 law firms and asked them what claims were being
14 withheld by them and they came to a number. Now, I
15 don't know if they did that in 1994, but at some
16 point, they provided information like that to their
17 members.

18 Q Do you know when they did that? You say
19 you don't know for sure?

20 A I don't know when they started doing it.

21 Q Where would a copy of that be located, if
22 you were going to try to find it?

23 A To the degree it was shared with members
24 of the CCR, GAF may have a copy of it.

25 Q Do you have a copy of it?

Page 197

1 A I don't have a copy of the document, but I
2 was told by Dee Hilton that -- of this project done
3 by the center of claims resolution and how their
4 estimation of how many claims might be accruing.

5 Q When were you told by Dean Hilton?

6 A Dee.

7 Q Dee.

8 A Dee, Dee, Dee.

9 I don't recall the date I was told.

10 Q Do you know when the injunction was lifted
11 in Georigine?

12 A It was shortly after the Supreme Court's
13 decision which was, I think, at the end of June
14 1997. It was some time in the next month or two.

15 Q I think you say on the top of page 9 that
16 by December of 1998 -- this is the first full
17 sentence at page 9. "By December 31, 1998, most
18 claims and settlements that are accrued until the
19 period of the injunction had been filed."

20 Did I read that correctly?

21 A Yes.

22 Q So what you did, it's my understanding, in
23 the second part of the report, beginning with
24 section 7, was to look at the data you could get
25 after that date to try to figure out -- or as of

Page 199

1 understand the significance of those increases;
2 right?

3 A I don't think you could fully understand
4 is probably a better word. They're ambiguous.
5 They're ambiguous, uncertain.

6 Q In the National Gypsum case, you used a
7 most probable analysis based on a decreasing
8 propensity to sue; isn't that correct?

9 A Well, I had, as I said earlier, a range of
10 estimates, 16 or so which I provided the Court, and
11 it ultimately got me to agree that I provided all of
12 these in order to let the Court or anybody who
13 wanted to make whatever combinations of assumptions
14 they wanted to make with regard to those that I
15 presented. But I think I testified that it was my
16 opinion that for National Gypsum, in January 1993,
17 that there was more likely to be a decrease in the
18 propensity to sue, yes, based on the data that I
19 have available to me, which was data through 1991.

20 Q Your Fibreboard testimony was late in
21 1994; isn't that true?

22 A It was some time during 1994. I don't
23 recall the date.

24 Q Do you recall what your most probable
25 scenario was on propensity to sue in terms of

Page 200

1 increasing, decreasing, or flat for your Fibreboard
2 preferred analysis?

3 A I had combinations of -- the Fibreboard
4 analysis is very complicated. It had two different
5 periods of time that I used as the base period for
6 forecasting propensities to sue, and it had -- I
7 don't think there was an increasing propensity to
8 sue in that case. I think there was a decrease --
9 decreasing propensity to sue and a flat propensity
10 to sue. There were a complex set of assumptions
11 about nonmalignant claims.

12 I think a declining multiplier but then
13 adding in claims that were going to be a part of
14 what I called a temporary surge -- temporary surge
15 or acceleration, I guess it was, and a permanent
16 acceleration, which had the effect of essentially
17 adding to or increasing the numbers of nonmalignant
18 claims over the next five or six years. So it was
19 really a complicated set of forecasts, and I don't
20 recall which of those that I said was --

21 Q As you say, in Fibreboard, you did not use
22 an increasing propensity to sue model as a preferred
23 model; is that true?

24 A I think that's correct, yes.

25 Q When did you first give testimony, either